

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Etowah Properties, LLC)
Dist. 4, Map 118B, Group D, Control Map 118B,) McMinn County
Parcel 44.00, S.I. 000)
Industrial Property)
Tax Year 2005)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$75,000	\$913,000	\$988,000	\$395,200

An appeal has been filed on behalf of the taxpayer/property owner, Etowah Properties, LLC, with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 29, 2006 in Athens, Tennessee. The taxpayer was represented by D. Mitchell Bryant, Esq. The assessor of property, Don Cowart, represented himself. Also in attendance at the hearing were Chad and Farah Reynolds, both of whom are shareholders in Etowah Properties, LLC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an industrial building constructed in 1920 currently utilized for warehousing.

The threshold issue in this appeal concerns jurisdiction. This issue arises from the fact that the disputed appraisal was not appealed to the McMinn County Board of Equalization. Instead, the taxpayer filed a direct appeal with the State Board of Equalization on August 1, 2005.¹

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

¹ Although the appeal was not actually received until August 3, 2005, the administrative judge finds that the postmark date of August 1, 2005 constitutes the filing date. See Tenn. Code Ann. § 67-1-107.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). See also *John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond its control prevented it from appealing to the McMinn County Board of Equalization.

Mr. Reynolds testified that subject parcel is one of eight or nine parcels comprising subject property. According to Mr. Reynolds, the taxpayer owns several parcels of commercial property and receives tax bills for each parcel from both the City of Etowah and McMinn County.

Mr. Reynolds did not dispute receiving the assessment change notice issued by the assessor of property on May 17, 2005. However, Mr. Reynolds stated that he did not realize at the time that the appraisal of subject parcel had been significantly increased. Mr. Reynolds testified that no other parcels had changed in value and 2005 was *not* a reappraisal year for McMinn County.

The taxpayer also relied on the testimony of Farah Reynolds. Ms. Reynolds essentially testified that since the taxpayer receives a significant volume of mail, it is Mr. Reynolds practice to let the mail accumulate and pay the bills once a month.

The assessor opposed the taxpayer's contention that reasonable cause exists for its failure to appeal to the McMinn County Board of Equalization. Mr. Cowart testified that he issued an assessment change notice on May 17, 2005. See exhibit 1. According to Mr. Cowart, he had previously agreed to reduce the appraisal of subject property and review it after five years. For whatever reason, Mr. Cowart actually waited over six years before reviewing the appraisal of subject property. Thus, the appraisal of subject property was adjusted in 2005 rather than in conjunction with the 2003 countywide reappraisal.

Respectfully, the administrative judge finds the taxpayer failed to establish that its failure to appeal to the McMinn County Board of Equalization was caused by a circumstance beyond its control. The administrative judge finds that for all practical purposes the taxpayer is claiming that ignorance or inattentiveness should be deemed to

constitute reasonable cause. The administrative judge finds that the Assessment Appeals Commission rejected a similar claim in *Transit Plastic Extrusions, Inc.* (Lewis County, Tax Years 1990 & 1991) reasoning in pertinent part as follows:

... The administrative judge found that the failure of the taxpayer to appeal was the result of a lack of understanding of property tax valuation and appeal procedures by the taxpayer's principal owner and staff. The administrative judge found that the 'reasonable cause' statute was intended to relieve a taxpayer from forfeiting appeal rights due to circumstances beyond the taxpayer's control, such as illness, rather than from mere inadvertence, lack of knowledge, or neglect. We agree with this conclusion. A taxpayer, who has been properly notified of an assessment change, as was the case here, cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal. ...

Final Decision and Order at 2. Similarly, in *Gerald F. Hollenbeck* (Shelby County, Tax Years 2001-2003) the Assessment Appeals Commission ruled that the taxpayer failed to establish reasonable cause for not appealing to the county board of equalization reasoning in relevant part as follows:

... The only reason offered for the failure to appeal the assessment first to the county board of equalization, was that the taxpayer did not understand or was not aware of the requirement.

* * *

... Findings of reasonable cause in other cases have generally been predicated on some circumstances beyond the control of the taxpayer rather than simply being unaware of the legal requirements for appeal. The testimony in this case does not provide a basis for a finding of reasonable cause. . .

Final Decision and Order at 1. See also *Jerry W. & Vickie Light* (Davidson County, Tax Year 1993) wherein the Assessment Appeals Commission ruled that "[w]e do not believe a simple failure to apprehend the [assessment change] notice constitutes reasonable cause for failure to pursue an appeal to the county board, unless it is shown that the notice is patently deficient." Final Decision and Order at 2.

As stated at the hearing, the administrative judge finds that the present case in no way involves an unconstitutional spot reappraisal. See *Mall of Memphis Associates v. Tennessee State Board of Equalization*, No. 02A01-9609-CH-00214 (Tenn. App., August 1, 1997, Western Section).

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$75,000	\$913,000	\$988,000	\$395,200


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of April, 2006.


 MARK J. MINSKY
 ADMINISTRATIVE JUDGE
 TENNESSEE DEPARTMENT OF STATE
 ADMINISTRATIVE PROCEDURES DIVISION

c: D. Mitchell Bryant, Esq.
 Don Cowart, Assessor of Property